· THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE P.S.NARAYANA

+ W.P.No. 9675 of 2004

% Dated 27.8.2004

 # M/s. Kumar's Metallurgical Corporation Limited

…. Petitioner

Vs.

$ The Commercial Tax Officer, Vijayanagar Circle, Hyderabad

….Respondent

! Counsel for Appellant: Mr. S. Ravi, Advocate.

^Counsel for Respondent: Spl. G.P. for Taxes

<GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE TWENTY SEVENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE BILAL NAZKI
and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 9675 of 2004

Between:
M/s. Kumar's Metallurgical Corporation Limited, A Public Limited Company incorporated under the provisions of Companies Act, 1956, having its Registered Office at Chityal Village, Vattimaurti Nalgonda District. Rep. by its Senior Manager (F & A) Mr. M.S. Rama Mohan, S/o. Late Sri. M. Viswa Prasad,age 48

..... PETITIONER

AND

The Commercial Tax Officer, Vijayanagar Circle, Hyderabad.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, direction or order especially in the nature of Writ of Certiorari quashing the notice dated 28-5-2004 calling upon the petitioner to transfer the shares/ issued duplicate share certificates in respect of certain alleged defaulters as being ultra vires the provisions of section 17 of the Andhra Pradesh General Sales Tax, 1957 contrary to law

Counsel for the Petitioner: MR.S.RAVI

Counsel for the Respondent : GP FOR COMMERCIAL TAX

The Court at the admission stage made the following :

ORDER: (Per Hon'ble Mr. Justice Bilal Nazki)

This is a writ petition challenging the notice dated 28.5.2004 by which the petitioner has been asked to transfer the shares and issue duplicate share certificates in respect of certain defaulters. The petitioner is the Senior Manager of the petitioner-company and is carrying on business of manufacture of sponge iron at its factory in Chityal, Nalgonda district. It is submitted by him that on 24.4.2004 a notice purported to have been issued under Section 17 of the Andhra Pradesh General Sales Tax Act, 1957 (for short "APGST Act") was served on him by the respondents. The respondents contended that certain assessees viz., Coastal Wines, Andhra Agencies, Vishal Wines, Neeraj Wines, Omprakash Agarwal & Co., Kumar Sprits Private Limited (hereinafter called "Assessees") were in arrears of different sums on account of sales tax and therefore the petitioner was asked to pay the amounts due from such assessees. This notice has been challenged on the ground that it has been issued without jurisdiction and Section 17 of the APGST Act does not permit recovery of tax and other dues under the Sales Tax

Act from persons from whom the money is not due to the dealer, and according to the petitioner, he only holds the shares belonging to the assessees, but no money was due from him to the assessees. The impugned notice dt. 28.5.2004 reads as under,

> "M/s. Kumar Metallargical Corporation Limited, Vattimarthy village, Chityal Mandal, Nalgonda District shall take notice that this office have attached the shares of the following defaulters in the reference 1st cited.
>
> 1) Sri Satish Kumar Agarwal s/o Omprakash Agarwal;
> 2) Sri Anil Kumar Agarwal s/o Omprakash Agarwal;
> 3) Smt. Sashi Agarwal w/o Satish Kumar Agarwal;
> 4) Smt. Uma Agarwal w/o Anil Kumar Agarwal;
> 5) Sri Kuntala Kumari w/o Om Prakash Agarwal;
>
> Now M/s. Kumar Metallargical Corporation Limited shall transfer the above persons shares to the Commercial Tax Officer, Vidyanagar Circle in original. If in case the cited defaulters have not transferred their shares to the company shall issue the duplicate shares in favouring Commercial Tax Officer, Vidyanagar Circle within 7 days of receipt of this notice, failing which the undersigned every right to file liquidate petition before the Honourable Andhra Pradesh High Court to liquidate the shares value from your company under the Company's Act 1956.
>
> Please make a note that every notice is

furnishing to the Hon'ble Bench BIFR, New Delhi for their kind instructions."

Section 17 (1) of the APGST Act reads as under,

"17. Recovery of tax and other dues payable under the Act from persons from whom money is due to the dealer: (1) The assessing authority, may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the dealer at his last address known to the assessing authority) require any person from whom money is due or may become due to the dealer, or any person who holds or may subsequently hold money for, or on account of the dealer, to pay to the assessing authority either forthwith if the money has become due or is so held, or within the time specified in the notice (but not before the money becomes due or is held), so much of the money as is sufficient to pay the amount due by the dealer in respect of (arrears of tax, interest, penalty or fee) or the whole of the money when it is equal to or less than that amount.

NOTE: The bracketed words were substituted for the words 'arrears of tax, penalty or fee' by Act 18 of 1985, w.e.f. 1.7.1985"

This section makes it clear that money should be due or should become due to the dealer in case of holding shares. It is contended that no money is being held by the petitioner belonging to the assessees in terms of Section 17 (1) of the APGST Act. It is contended that under

Section 17 (4) of the APGST Act it is contemplated that any person discharging any liability to the dealer after receipt of the notice under the Section shall be personally liable to the assessing authority to the extent of the liability discharged. In terms of the impugned notice no amount is quantified as it could not be because of holding of the shares. On facts it has been stated that at present the petitioner had no transaction with the assessees. The petitioner, however, contends that he does not owe any money either to the assessees or the persons stated in the notice dt. 26.5.2004 and 28.5.2004. As a matter of fact, only Satish Kumar Agarwal and Shashi Agarwal were directors of the petitioner's company, but the remaining persons have nothing to do with the petitioner's company.

In the counter-affidavit it is stated that only the amounts which were due from the defaulters have been mentioned and then it is stated that the department for the purpose of making the recoveries made discreet enquiries whether the defaulters possess any immovable property. The enquiry revealed that the defaulters did not have any immovable property. They came to know that the petitioner and the defaulters had common interest in the petitioner's company because some of the defaulters were partners of the petitioner's company.

Under Section 17 of the APGST Act, as has been seen above, there is no power with the respondents to ask for transfer of shares. In these circumstances, the

orders of the respondents appear to be illegal and not in accordance with the Section 17 of the APGST Act.

An additional affidavit has been filed by the Asst. Commercial Tax Officer in which it is stated that the Court may grant liberty to the respondents to proceed against the petitioner in case it feels that the attachment under Section 17 of the APGST Act was not in accordance with law. This Court has no objection to proceed against the defaulters in accordance with law and the liberty is granted.

With the above observation, the writ petition is allowed and the impugned notice is quashed. No costs.

_____
BN J.

_____
PSN J.

Dt. 27.8.2004
KR

NB:
LR copies to be marked.
/Bo/

Sd/-
ASST. REGISTRAR

//True copy//

Section Officer

One Fair copy to the Hon'ble Mr. Justice Bilal Nazki (for his Lordship's kind perusal)
One Fair copy to the Hon'ble Mr. Justice P.S. Narayana (for his Lordship's kind perusal)
To

1 **The Commercial Tax Officer, Vijayanagar Circle, Hyderabad.**
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